

February 13, 2020

Via Electronic Filing

Hon. Jocelyn Boyd
The Public Service Commission of South Carolina
101 Executive Drive, Suite 100
Columbia, SC 29210

Re: Comments by Johnson Development Associates, Incorporated and the South Carolina Solar Business Alliance, Incorporated on Proposed Regulation 103-811.5 on the Role of the Qualified Independent Third-Party Expert and the Reliance by the Commission on the Final Report Issued by the Qualified Independent Third Party Expert.

Dear Ms. Boyd:

On December 11, 2019, the Public Service Commission of South Carolina (“Commission”) filed a Notice of Drafting with the South Carolina Legislative Council that it would be drafting Proposed Regulation 103-811.5 to address the Role of the Qualified Independent Third-Party Expert and the Reliance by the Commission on the Final Report Issued by the Qualified Independent Third Party Expert. Johnson Development Associates, Incorporated (“JDA”) and the South Carolina Solar Business Alliance, Incorporated (“SCSBA” and collectively “JDA and SCSBA”) take this opportunity to file written comments in response to this notice of drafting.

JDA and SCSBA feel strongly about this issue as it was a priority in the drafting of Act No. 62 of 2019 (“Act 62”) and throughout the legislative process to see that the language was codified. JDA and SCSBA believe that the role of the expert and the weight afforded to the final report is clear in the statute and a regulation to expand on these issues is not necessary. S.C. Code Ann. § 58-41-20(I) states in full that:

[t]he commission is authorized to employ, through contract or otherwise, third-party consultants and experts in carrying out its duties under this section, including, but not limited to, evaluating avoided cost rates, methodologies, terms, calculations, and conditions under this section. The commission is exempt from complying with the State Procurement Code in the selection and hiring of a third-party consultant or expert authorized by this subsection. The commission shall engage, for each utility, a qualified independent third party to submit a report that includes the third party's independently derived conclusions as to that third party's

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opinion of each utility's calculation of avoided costs for purposes of proceedings conducted pursuant to this section. The qualified independent third party is subject to the same ex parte prohibitions contained in Chapter 3, Title 58 as all other parties. The qualified independent third party shall submit all requests for documents and information necessary to their analysis under the authority of the commission and the commission shall have full authority to compel response to the requests. The qualified independent third party's duty will be to the commission. Any conclusions based on the evidence in the record and included in the report are intended to be used by the commission along with all other evidence submitted during the proceeding to inform its ultimate decision setting the avoided costs for each electrical utility. The utilities may require confidentiality agreements with the independent third party that do not impede the third-party analysis. The utilities shall be responsive in providing all documents, information, and items necessary for the completion of the report. The independent third party shall also include in the report a statement assessing the level of cooperation received from the utility during the development of the report and whether there were any material information requests that were not adequately fulfilled by the electrical utility. Any party to this proceeding shall be able to review the report including the confidential portions of the report upon entering into an appropriate confidentiality agreement. The commission and the Office of Regulatory Staff may not hire the same third-party consultant or expert in the same proceeding or to address the same or similar issues in different proceedings.

The expert is to serve as an advisor to the commission, bound by the same ex parte prohibitions as commission staff, shall perform, in addition to an independent analysis of each utility's avoided cost inputs and methodology, tests to confirm the mathematical accuracy of calculations embedded in the utilities' submission, and prepare a report of their findings. The report itself, along with any other work product submitted by the expert shall be evidence along with all other evidence submitted during the proceeding. This instructive language is contained in statute and had the General Assembly intended for the Commission to promulgate regulations around this Code Section it would have specifically granted that authority.

Should the Commission decide it necessary to proceed with promulgation of a regulation, JDA and SCSBA believe that the process utilized in Docket Nos. 2019-184-E, 2019-185-E, and 2019-186-E as well as the instruction to the expert that their role includes modeling their own data inputs via an independent analysis of a utility's avoided cost rather than relying on inputs from the utility as a "starting point" and thus being constrained to working from the utility's avoided cost data and assumptions should be reduced to the language included in Proposed Regulation 103-811.5. As such, JDA and SCSBA propose the below as draft language.

"1. The qualified, independent third-party consultant or expert is subject to the same ex parte prohibitions contained in Chapter 3, Title 58 as Commissioners and Commission Employees. The qualified, independent third-party consultant or expert shall submit all requests for documents and information necessary to conduct its analysis under the authority of the Commission, and the Commission shall have full authority to compel responses from parties to the request. The

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qualified, independent third-party consultant or expert's duty will be to the Commission. No communications between the expert and any party regarding an issue before the Commission should be communicated without notice to all parties to the proceeding.

2. All communications between any party and the qualified, independent third-party consultant or expert must be communicated to all parties contemporaneous with the original communication.

3. Upon retention by the Commission, the qualified, independent third-party consultant or expert shall sign an acknowledgement of the ex parte prohibitions in Chapter 3, Title 58.

4. The qualified, independent third-party consultant or expert shall submit a proposed procedural schedule for the timing of the development and issuance of its report and its intended approach to complying with the ex parte prohibition provisions in carrying out its responsibilities to the Commission.

5. The role of the qualified, independent third-party consultant or expert's duty is to advise the Commission and their role includes modeling its own data inputs and calculations via an independent analysis of an electrical utility's avoided cost. The role of the qualified, independent third-party consultant or expert is not to rely solely on inputs from the utility so as to be constrained to working from the utility's avoided cost data, inputs, and assumptions.

6. All parties shall receive the Final Report at least ten (10) days prior to the Commission's vote in the proceeding and must be given a reasonable opportunity to respond in writing to the Final Report prior to the Commission's vote in the proceeding.

7. The Final Report shall be included in the record and considered evidence along with all other evidence in the proceeding, and given the appropriate value as each Commissioner does with any evidence in the record."

JDA and SCSBA appreciate the Commission's work on this important aspect of Act 62 and, pursuant to Chapter 23 of Title 1, request the opportunity to have a public hearing on the Proposed Regulation 103-811.5 prior to transmittal to the General Assembly.

Very truly yours,

/s/ James H. Goldin

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